

§ 4.1191

§ 4.1191 Answer.

The permittee shall have 30 days from receipt of the order within which to file an answer with the Hearings Division, OHA, Arlington, Va.

§ 4.1192 Contents of answer.

The permittee's answer to a show cause order shall contain a statement setting forth—

(a) The reasons in detail why a pattern of violations does not exist or has not existed, including all reasons for contesting—

(1) The fact of any of the violations alleged by OSM as constituting a pattern of violations;

(2) The willfulness of such violations; or

(3) Whether such violations were caused by the unwarranted failure of the permittee;

(b) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Any other alleged relevant facts; and

(d) Whether a hearing on the show cause order is desired.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 61510, Oct. 1, 2002]

§ 4.1193 Notice of hearing.

If a hearing on the show cause order is requested, or if no hearing is requested but the administrative law judge determines that a hearing is necessary, the administrative law judge shall give thirty days written notice of the date, time, and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor.

[67 FR 61510, Oct. 1, 2002]

§ 4.1194 Burden of proof in suspension or revocation proceedings.

In proceedings to suspend or revoke a permit, OSM shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

[43 FR 34386, Aug. 3, 1978. Redesignated at 67 FR 61510, Oct. 1, 2002]

43 CFR Subtitle A (10–1–10 Edition)

§ 4.1195 Determination by the administrative law judge.

(a) Upon a determination by the administrative law judge that a pattern of violations exists or has existed, the administrative law judge shall order the permit either suspended or revoked. In making such a determination, the administrative law judge need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the minimum suspension period shall be 3 working days unless the administrative law judge finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of the act. Also, the administrative law judge may impose preconditions to be satisfied prior to the suspension being lifted.

(c) The decision of the administrative law judge shall be issued within 20 days following the date the hearing record is closed by the administrative law judge or within 20 days of receipt of the answer, if no hearing is requested by any party and the administrative law judge determines that no hearing is necessary.

(d) At any stage of a suspension or revocation proceeding being conducted by an administrative law judge, the parties may enter into a settlement, subject to the approval of the administrative law judge.

[43 FR 34386, Aug. 3, 1978. Redesignated and amended at 67 FR 61510, Oct. 1, 2002]

§ 4.1196 Summary disposition.

(a) In a proceeding under this section where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the administrative law judge may assume for purposes of the proceeding that—

(1) Each violation listed in the order occurred;

(2) Such violations were caused by the permittee's unwarranted failure or were willfully caused; and

(3) A pattern of violations exists.

(b) In order to issue an initial decision concerning suspension or revocation of the permit when the permittee

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fails to appear at the hearing, the administrative law judge shall either conduct an ex parte hearing or require OSM to furnish proposed findings of fact and conclusions of law.

[43 FR 34386, Aug. 3, 1978. Redesignated at 67 FR 61510, Oct. 1, 2002]

§ 4.1197 Appeals.

Any party desiring to appeal the decision of the administrative law judge shall have 5 days from receipt of the administrative law judge's decision within which to file a notice of appeal with the Board. The Board shall act immediately to issue an expedited briefing schedule. The decision of the Board shall be issued within 60 days of the date the hearing record is closed by the administrative law judge or, if no hearing is held, within 60 days of the date the answer is filed.

[43 FR 34386, Aug. 3, 1978. Redesignated at 67 FR 61510, Oct. 1, 2002]

APPLICATIONS FOR REVIEW OF ALLEGED DISCRIMINATORY ACTS UNDER SECTION 703 OF THE ACT

§ 4.1200 Filing of the application for review with the Office of Hearings and Appeals.

(a) Pursuant to 30 CFR 865.13, within 7 days of receipt of an application for review of alleged discriminatory acts, OSM shall file a copy of the application in the Hearings Division, OHA, 801 N. Quincy Street, Suite 300, Arlington, VA 22203. OSM shall also file in the Hearings Division, OHA, Arlington, VA, a copy of any answer submitted in response to the application for review.

(b) The application for review, as filed in the Hearings Division, OHA, shall be held in suspense until one of the following takes place—

(1) A request for temporary relief is filed pursuant to § 4.1203;

(2) A request is made by OSM for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(3) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(4) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(b);

(5) A request is made by OSM that OHA close the case because OSM, the

applicant, and the alleged discriminating person have entered into an agreement in resolution of the discriminatory acts and there has been compliance with such agreement.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002; 67 FR 61510, Oct. 1, 2002]

§ 4.1201 Request for scheduling of a hearing.

(a) If OSM determines that a violation of section 703(a) of the act has probably occurred and was not resolved at the informal conference, it shall file with the Hearings Division, OHA, a request on behalf of the applicant that a hearing be scheduled. The request shall be filed within 10 days of the completion of the informal conference, or where no conference is held, within 10 days following the scheduled conference. Where OSM makes such a request, it shall represent the applicant in the administrative proceedings, unless the applicant desires to be represented by private counsel.

(b) If OSM declines to request that a hearing be scheduled and to represent the applicant, it shall within 10 days of the completion of the informal conference, or where no conference is held, within 10 days following the scheduled conference, notify the applicant of his right to request the scheduling of a hearing on his own behalf. An applicant shall file a request for the scheduling of a hearing in the Hearings Division, OHA, within 30 days of service of such notice from OSM.

(c) If no request for the scheduling of a hearing has been made pursuant to paragraph (a) or (b) of this section and 60 days have elapsed from the filing of the application for review with OSM, the applicant may file on his own behalf a request for the scheduling of a hearing with the main office of OHA. Where such a request is made, the applicant shall proceed on his own behalf, but OSM may intervene pursuant to § 4.1110.

§ 4.1202 Response to request for the scheduling of a hearing.

(a) Any person served with a copy of the request for the scheduling of a hearing shall file a response with the Hearings Division, OHA, Arlington,